

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN L. SULLIVAN)

For Appellant: Mori and Ota
Attorneys at Law

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John L. Sullivan against proposed assessments of additional personal income tax and penalties in the total amounts of \$2,511.30, \$3,707.99, \$7,090.13, \$5,991.83, \$2,388.71, and \$1,760.63 for the years 1958, 1959, 1960, 1961, 1962, and 1963, respectively.

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In 1972 respondent learned that appellant had filed a petition in the U.S. Tax Court contesting various federal audit adjustments and fraud penalties for the years 1958-1963. Respondent subsequently obtained copies of the federal deficiency assessment and audit report for those years, and issued comparable state income tax assessments when it discovered that appellant had not filed California returns during that period. Included in respondent's initial assessment for each year were a 25 percent penalty for failure to file a timely return and a 50 percent penalty for fraud. Appellant protested the assessments, and later submitted a copy of the Tax Court's decision, which revised the federal assessments to some extent in appellant's favor. Based on the Tax Court determination, respondent revised its original assessments and withdrew the fraud penalties. These revised assessments, including the failure to file penalties, are the ones now before us.

In opposing the assessments, appellant has confined himself to a bald assertion that the federal determination of his income was wrong, and has **alleged** that he can't possibly afford to pay the assessments. It is settled law that a judicial disposition of a taxpayer's case at the federal level is highly persuasive of the result that should be reached by this board. (Appeal of M. Hunter and Martha J. Brown, Cal. St. Bd. of Equal., Oct. 7, 1974; Appeal of Dorothy C. Thorpe Glass Mfg. Co., Cal. St. Bd. of Equal., Sept. 17, 1973.) Where, as here, the **appellant** offers no substantive evidence to 'show that the federal determination was erroneous, we would not be justified in reaching a conclusion contrary to that of the Tax Court.

For similar reasons, we must **sustain** the imposition of the penalties for failure to file timely returns. Appellant has the burden of proving that he filed timely returns (Appeal of Thomas T. Crittenden, Cal. St. Bd. of Equal., Oct. 7, 1974), but has made no effort to establish his compliance with the statutory filing requirements.

Finally, we note appellant's statements regarding his inability to pay the assessments. That is a collection matter to be resolved between him and respondent, and it of course does not affect the correct computation of his state tax liability.

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For the above reasons, respondent's assessments of tax and penalties will be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of John L. Sullivan against proposed assessments of additional personal income tax and penalties in the total amounts of \$2,511.30, \$3,707.99, \$7,090.13, \$5,991.83, \$2,388.71, and \$1,760.63 for the years 1958, 1959, 1960, 1961, 1962, and 1963, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of January , 1980, by the State Board of Equalization.

	, Chairman
	, Member
	, Member
	, Member
	, Member